

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Public Service Company of Colorado and International Brotherhood of Electrical Workers, Local 111.** Case 27–CA–18700

October 29, 2003

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative of the Respondent's revenue protection analysts and revenue protection investigators in the underlying representation proceeding. Pursuant to a charge filed on August 7, 2003, the General Counsel issued an amended complaint on September 10, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 27–RC–8220. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint, and asserting affirmative defenses.

On September 29, 2003, the General Counsel filed a Motion for Summary Judgment. On October 3, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 14 and 16, 2003, respectively, the Union and the Respondent filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its contention in the underlying representation proceeding that the revenue protection analysts and revenue protection investigators are statutory supervisors.<sup>1</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representa-

tion proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Denver, Colorado, has been engaged as a public utility in providing electricity and natural gas to both retail and nonretail customers. The Respondent, in the course and conduct of its business operations described above, annually receives gross revenues in excess of \$250,000 and purchases and receives goods and materials valued in excess of \$50,000 directly from points located outside the State of Colorado. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Electrical Workers Local Union 111, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following an election held June 13, 2003, the Board issued a certification on June 24, 2003, certifying that the Union may bargain for the voting group described below as part of the existing unit of operating, production, and maintenance employees it currently represents (known as the OP&M unit):

All revenue protection analysts and revenue protection investigators employed by the Employer, but excluding all professional employees, confidential employees, guards, and supervisors as defined by the Act, and all other employees.

The Union continues to be the exclusive bargaining representative of the revenue protection analysts and revenue protection investigators as part of the OP&M unit under Section 9(a) of the Act.

*B. Refusal to Bargain*

About August 1, 2003, the Union, by letter, requested the Respondent to bargain with it as the exclusive collective-bargaining representative of the revenue protection

<sup>1</sup> In the underlying representation proceeding, the Respondent also contended that the revenue protection analysts and revenue protection investigators are managerial employees. However, the Respondent has not repeated that contention here in either its answer or response to the Notice to Show Cause.

analysts and revenue protection investigators, and since August 6, 2003, the Respondent has refused to do so. We find that the Respondent has thereby unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after August 6, 2003, to bargain with the Union as the exclusive collective-bargaining representative of the revenue protection analysts and revenue protection investigators as part of the OP&M unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

#### ORDER

The National Labor Relations Board orders that the Respondent, Public Service Company of Colorado, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Brotherhood of Electrical Workers, Local 111, as the exclusive bargaining representative of employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the following group of employees as part of the recognized OP&M unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All revenue protection analysts and revenue protection investigators employed by the Employer, but excluding all professional employees, confidential employees, guards, and supervisors as defined by the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Denver, Colorado, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union  
Choose representatives to bargain with us on  
your behalf

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the International Brotherhood of Electrical Workers, Local 111, as the exclusive representative of employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the following group of employ-

ees as part of the recognized operating, production, and maintenance (OP&M) unit, and put in writing and sign any agreement reached on terms and conditions of employment for those employees:

All revenue protection analysts and revenue protection investigators employed by us, but excluding all professional employees, confidential employees, guards, and supervisors as defined by the Act, and all other employees.

PUBLIC SERVICE COMPANY OF COLORADO